

## 1. DEFINITIONS

- (a) In this Purchase Order, except where the context otherwise requires:

**Client** means PCF Construction Services Pty Ltd, or such other party as is notified by PCF Construction Services Pty Ltd to the Supplier as the Client under this Purchase Order;

**Date for Completion of the Services** means the date specified in the Purchase Order as being the date for the Completion of the Services or as advised by the Client;

**Date of Completion of the Services** means the date of completion of the Services as assessed by the Client;

**Date of Delivery of the Goods** means the packaging, transporting, and unloading of the Goods at the designated Delivery Point in accordance with the delivery terms specified in the Purchase Order, and the Supplier has otherwise done everything required to be done

**Date for Delivery of the Goods** means the date specified in the Purchase Order as being the date for delivery of the Goods or as advised by the Client;

**Delivery Point** means to the location specified for the delivery of the Goods in the Purchase Order or as otherwise advised by the Client to the Supplier;

**Goods** means the items to be provided by the Supplier to the Client as described in the Purchase Order;

**Undertakings** means:

In relation to Goods, that:

- (i) the Goods will comply strictly with the Purchase Order, including as to quantity, quality (state and condition) and description (and irrespective of any damage or deterioration in transit);
  - (ii) the Goods are of a description which it is in the course of the Supplier's business to supply;
  - (iii) the Supplier has the right to sell the Goods;
  - (iv) the Client may have quiet possession of the Goods;
  - (v) the Goods are and will be free from any lien, charge, or encumbrance in favour of any person (including the Supplier);
  - (vi) the Goods will be new, free of faults and of merchantable quality; and
  - (vii) the Goods will be reasonably fit for the Purpose;
- In relation to Services, that:
- (viii) the Supplier shall perform the Services to that standard of care and skill to be expected of a supplier who regularly acts in the capacity in which the Supplier is engaged and who possesses the knowledge, skill and experience of a supplier qualified to act in that capacity.
  - (ix) the Services are suitable, appropriate, and adequate for the purpose stated in the Purchase Order;
  - (x) the Supplier shall perform the Services with due expedition and without delay and in accordance with any program provided by the Client to the Supplier;
  - (xi) the Supplier shall comply with all directions of the Client in relation to the Services, including pursuant to a provision of the Purchase Order;
  - (xii) the Supplier shall remain fully responsible for the Services carried out by the Supplier notwithstanding any acceptance of those Services by the Client; and
  - (xiii) the Supplier must comply with all laws in carrying out the Services;

**PPS Act** means the Personal Properties Securities Act 2009 (Cth);

**PPS Law** means the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time and any relevant amendment made at any time to any other legislation as a consequence;

**Price** means the total price to be paid by the Client to the Supplier as set out in the Purchase Order;

**Purpose** includes the purpose stated in the Purchase Order; and any other purpose made known to the Supplier before the date of the Purchase Order, or if no purpose is made known, the purpose for which the Goods or Services are most commonly used in projects such as the project in which the Supplier is engaged.

**Services** means the services including the works and supply of Goods to be provided by the Supplier to the Client as described in the Purchase Order; and

**Supplier** means the party named in the Purchase Order as the supplier/subcontractor

- (b) The Client's rights and remedies are in addition to those it has elsewhere under the Purchase Order or otherwise at law (including under statute). No course of dealing or usage will negative these rights and remedies. A discretion given to the Client is unfettered and need not be exercised for the benefit of the Supplier. The Supplier agrees that a loss directly and naturally flowing from the Supplier's failure to comply with the Services including the Undertakings and includes any loss it incurs due to any liability of the Client to its client (Principal) in respect of such failure, and nothing in this Purchase Order will be interpreted to exclude or limit the Supplier's liability for such loss. The Supplier must bear all risks and costs (whether ascertainable at the date of this Purchase Order or not) arising out of or in connection with the provision of, or failure to provide, the Services, except to the extent expressly made the responsibility of the Client under the Purchase Order.

## 2. BINDING ORDERS

This Purchase Order will be deemed to have been unconditionally accepted by the Supplier on commencement of performance of any of the Supplier's obligations under this Purchase Order (including Delivery of the Goods). This Purchase Order expressly supersedes any terms contained in the Supplier's quote, tender, order acceptance (whether provided before or after the date of this Purchase Order) or other standard conditions of supply, and any prior orders, instructions, acknowledgments or representations of the Client. This Purchase Order when properly signed and bearing an order number, is the only form which is recognised by the Client as authority for the Supplier to charge for the Services stated to its account.

## 3. COMPLIANCE

The Supplier must:

- (a) comply with all laws, including all Acts, Ordinances, regulations, standards, by-laws, orders, awards, and proclamations;
- (b) comply with the requirements of persons acting in the exercise of statutory powers enabling them to give directions with respect to this Purchase Order;
- (c) obtain all certificates, licences, consents, permits and approvals that are applicable to the sale, supply and delivery of the Goods, the performance of the Services or the carrying out of any activity by the Supplier in relation to the delivery of the Goods or the performance of the Services, whether directly or indirectly; and
- (d) in performing any of its obligations under this Purchase Order, the Supplier must comply with any reasonable directions given by the Client (including regarding occupational, health and safety matters when on a site on which the Client is working).

## 4. DELIVERY OF GOODS

The Supplier must deliver the Goods to the Delivery Point by the Date for Delivery of the Goods. The Client may accept delivery of the Goods before the Date for Delivery for the Goods. The Supplier bears the risk and cost of delivery of the Goods before the Date for Delivery of the Goods. If the Client accepts early delivery, it is not obliged to pay for the Goods early. Acceptance of delivery of Goods by the Client will not be deemed to be an acceptance that the Goods comply with this Purchase Order or otherwise affect any other obligation of the Supplier under this Purchase Order.

## 5. TIME

Time is of the essence in the performance of this Purchase Order by the Supplier. If promptly after it becomes aware of a delay the Supplier gives written notice of a delay to Date for Completion of the Services or the Date for Delivery of the Goods, as applicable, the Client must adjust the Date for Completion of the Services and or the Date for Delivery of the Goods, as the case may be, to the extent such delay is caused by a negligent act or omission of the Client and it is not concurrent with any other delay. The Client may adjust the Date for Completion of the Services and the Date for Delivery of the Goods for any other reason.

If the Supplier fails to perform any of its obligations under this Purchase Order on or before the time specified in this Purchase Order for delivery, the Client may reject the Goods or require the Supplier to do whatever is necessary to expedite the delivery of the Goods to arrive on or as close to the Date for Delivery of the Goods as possible, at the Supplier's expense, including the payment of premium freight charges.

Additionally, if the Supplier fails to deliver the Services by the Date for Completion of the Services, the Supplier must pay liquidated damages equal to the relevant daily liquidated damages payable by the Client to the Principal under Head Contract for the project (Liquidated Damages), until the relevant Date of Delivery of the Goods and/or Date of Completion of the Services, whichever is later. The parties agree that the Liquidated Damages are a genuine pre-estimate of loss.

## 6. INSPECTION, ACCEPTANCE OR REJECTION OF GOODS & SERVICES

- (a) The Client may require the Supplier to provide evidence acceptable to the Client that the Services are in accordance with this Purchase Order and the Supplier must provide such evidence within the time prescribed in the request.
- (b) All Goods ordered are subject to inspection by the Client on arrival at the Delivery Point.
- (c) The Client or its representative may inspect the Goods and any work performed during their manufacture, engineering, or installation, before delivery of the Goods, and the Supplier must give the Client access to its premises (or any premises at which the Goods are being manufactured or produced) to do so. Inspection or examination of the work or the Goods will not be deemed to be an acceptance of the Goods by the Client or affect any other obligation of the Supplier under this Purchase Order. All measurements are to be checked on site by the Supplier prior to commencement of any work under this Purchase Order, and the Supplier remains liable for any errors and the consequence of such errors and indemnifies the Client against any cost, claim, expense or other damage of whatsoever nature and kind arising from any error in measurements.
- (d) The Goods will be deemed to be accepted by the Client on the earlier of:
  - (i) the Supplier receiving a written notice of acceptance of the Goods from the Client; and

- (ii) 30 days having elapsed from the Date for Delivery for the Goods and the Date of Delivery of the Goods (whichever is the later) and the Supplier having provided to the Client all documents of title, delivery dockets, operating manuals and manufacturers' warranties (with conditions at least equivalent to those prevailing in the industry, noting the Client as end user and allowing for assignment to the Client) required by this Purchase Order or reasonably required by the Client.
  - (e) Even though acceptance and payment may have been made if, on inspection, the Goods fail to meet any requirements of this Purchase Order the Client may:
    - (i) require the Supplier to make good the loss, damage, or defect in the Goods to the Client within 5 business days;
    - (ii) reject the Goods (in whole or in part);
    - (iii) accept the Goods in whole or part and reduce or extinguish the Price to reflect the reduction in value of the Goods to the Client and/or require the Supplier to credit the Client for the amount of the deficiency; and/or
    - (iv) exercise any other right (including to claim damages).
  - (f) The Client may return any Goods that have been incorrectly ordered by the Client and must pay all freight costs and handling charges associated with effecting the return of such Goods and such payment shall be in full satisfaction of the Supplier's entitlements and any liability of the Client under or in connection with this Purchase Order. In no circumstances will the Supplier be entitled to any indirect or consequential loss arising from such conduct, including for loss of profit or loss of opportunity.
  - (g) The Supplier must, as part of the Price, provide all scaffolding and other ancillary work required to Deliver the Goods and / or complete the Services and arrange and be responsible for access for such Delivery and performance.
  - (h) The Client reserves the right to complete or take over the Supplier's Services or any part of the Services at the Supplier's expense if in the Client's opinion the Supplier is not performing the Services in accordance with this Purchase Order or as otherwise required by the Client. Any materials on the site become the property of the Client and may be used to carry out any remaining works.
  - (i) A defects liability period must continue for twelve months, commencing on the Date of Completion of the Services (Defects Liability Period), provided however that the Defects Liability Period will continue until such time as the Client is satisfied that all Defects have been rectified to the satisfaction of the Client. At any time prior to the expiry of the Defects Liability Period, the Client may direct the Supplier to rectify a Defect. The direction shall identify the defect and may state a date by which the works of rectification are to be completed. If during the Defects Liability Period, any Defects are not rectified by the Supplier within the time notified in any direction issued by the Client or where no such time is notified, a reasonable time, the Supplier agrees that it is deemed to have relinquished any rights it may have had to rectify the defects and the Client may, without prejudice to any other rights which the Client may have against the Supplier, carry out the rectification work or have it carried out at the Supplier's risk and expense. The Client may at any time prior to the expiry of the Defects Liability Period, notify the Supplier of a Defect in the Services stating that the Client intends to accept the defect. The Client may then, in its discretion, deduct or recover from the Supplier the costs to the Client to rectify the works, or the diminution in value of the Services, whichever is the greater and any other loss suffered by the Client.
- 7. TITLE AND RISK**
- Title in the Goods passes to the Client on the earlier of acceptance of delivery of the Goods and payment of the Supplier. Risk in the Goods does not pass to the Client until the later of acceptance of the Goods and payment of the Supplier.
- 8. PAYMENT AND INVOICING**
- (a) The Price is inclusive of all costs and expenses of the Supplier (whether foreseen or unforeseen) in complying with this Purchase Order and delivering the Services, including all costs of packaging, freight, insurance, duties and taxes (other than GST) (if any) which must be paid by the Supplier.
  - (b) On acceptance of the Goods, payment must, subject to a valid tax invoice been provided to the Client for the amount stipulated for the Goods in the Purchase Order, be made no later than 30 days (or the next business day thereafter) from the later of:
    - (i) the Date for Delivery of the Goods; and
    - (ii) the end of the calendar month in which the Goods are accepted by the Client in accordance with clause 6(d) of this Purchase Order
 which is the reference date for payment of the Goods for the purposes of SOPA.
  - (c) For all other Services except for the Goods, on the last business day of each month (which is the reference date for Services except for the Goods for the purposes of SOPA), the Supplier shall submit written progress claims for payment setting out the Supplier's valuation of the Services performed and accompanied by such information and documentation as is required by the Client to verify the claim. The Supplier must not include in a progress claim any claim for a variation, or any other claim under this Purchase Order which purports to adjust the Price or is a claim for any amount in addition to the Price or any claim otherwise (including for damages for breach of contract, quasi-contract or quantum meruit) unless the amount of any such claims has been agreed between the Client and the Supplier.
- (d) On or before the last business day in the month following the month in which the Supplier's progress claim is made in accordance with , and subject to clause 8(c) and any other entitlement under the Purchase Order to deduct moneys from the Supplier, the Client shall pay to the Supplier the amount assessed by the Client as due and payable to the Supplier.
  - (e) The Supplier is only entitled (including without limitation, for the purposes of the SOPA) to payment of the amount assessed by the Client under this clause 8, less any moneys that may be set off or deducted by the Client pursuant to this Purchase. Any payment made by the Client to the Supplier does not constitute approval of any work nor will it be taken as an admission or evidence that any work, or aspect of the Services has been satisfactorily carried out in accordance with this Agreement.
  - (f) Making a payment will not be construed as evidence or an admission that the Services have been supplied in accordance with this Purchase Order but is a payment on account only.
  - (g) The Client may deduct from moneys certified for payment or otherwise due to the Supplier any money due or payable or claimed by the Client to be due or payable from the Supplier to the Client under or for breach of the Purchase Order, or otherwise than under the Purchase Order.
  - (h) The Client may deduct up to 5% from payment due to the Supplier as retention up to amount of 5% of the Price (Retention Amount). The Retention Amount shall be returned to the Supplier 60 days after the expiry of the Defects Liability Period.
- 9. RIGHT TO ALTERNATIVE SUPPLY**
- (a) If the Supplier fails to deliver the Goods or perform the Services by the Date for Delivery of the Goods or Date for Completion of the Services, or delivers any Goods or performs any part of the Services which do not comply with any requirements of this Purchase Order, the Client may, without prejudice to any other rights under this Purchase Order:
    - (i) cancel this Purchase Order;
    - (ii) purchase replacement goods or services from a third party and charge the Supplier with the difference (if any) between the cost of such replacement goods or services and the Price in this Purchase Order;
    - (iii) require the Supplier to make good and/or compensate for the loss, damage (including delay damages) or defect to the Client within 5 business days;
    - (iv) reject the Goods or the Services (in whole or in part);
    - (v) accept the Goods or the Services in whole or part and reduce or extinguish the Price to reflect the reduction in value of the Goods or the Services to the Client and/or require the Supplier to credit the Client for the amount of the deficiency; and/or
    - (vi) exercise any other right (including to claim damages).
  - (b) The Client may at any time call for proposals or tenders for, or acquire Goods or Services similar or identical to the Goods and Services in any other way from any person, and the Client will not be liable in any circumstances to make any payment to the Supplier in respect of loss of prospective profits or any other claim of the Supplier.
- 10. ALTERATION OF ORDER**
- (a) The Supplier must not vary the specification, quantity, quality or description of the Goods or Services without the written consent of the Client and must not supply substitute or equivalent Goods or Services without the written consent of the Client.
  - (b) By notice in writing to the Supplier, the Client may at any time prior to the Date for Delivery of the Goods or Date for Completion of the Services order:
    - (i) variations to description, specification, quality and quantity of the Goods or Services; or
    - (ii) the Goods or Services to be delivered to a different Delivery Point or on a different date for delivery.
  - (c) The Price will be adjusted by the amount agreed by the parties or failing agreement, a reasonable price determined by the Client, in respect of the variation.
- 11. PERFORMANCE**
- (a) The Supplier gives the Undertakings. The Undertakings are fundamental conditions of this Purchase Order.
  - (b) The Supplier warrants that the manufacture, sale, or use of the Goods and/or provision of the Services does not and will not infringe any patent, copyright, trademark, or trade secret or any other industrial or intellectual property right conferred on any person by a law of Australia or any other country.
- 12. INDEMNITY**
- The Supplier must indemnify and keep indemnified the Client for any loss, damage, expense, claim, or liability suffered or incurred, by the Client as a result of the negligence or an act or omission of the Supplier, or the breach by the Supplier of any other requirements (including any warranty or any of the Undertakings) of this Purchase Order.
- 13. INSURANCE**
- (a) The Supplier must effect and maintain adequate insurance satisfactory to the Client including, without limitation, public liability (of not less than \$20,000,000), workers' compensation (including common law liability); automotive / motor vehicle insurance; freight liability; and product damage insurance and any other insurances reasonably required by the Client, all on such terms and for such amount as are reasonable in the circumstances and approved by the Client.

- (b) The Supplier must, if performing any Services which have a design element or if otherwise directed by the Client, effect and maintain adequate professional indemnity insurance (of not less than \$5,000,000 unless otherwise agreed by the Client) as part of the Price.
- (c) The Client may require, and the Supplier must provide evidence of proof of such insurance prior to the Client making any payment under this Purchase Order.

#### **14. TERMINATION**

- (a) The Client may terminate or suspend the Purchase Order or any unfulfilled part of the Purchase Order. The Client shall not be liable for any loss (including consequential or special loss), damages, costs or expenses howsoever arising from such cancellation or suspension. The liability of the Client to the Supplier is expressly limited to payment for Goods Delivered to the Client in accordance with this Purchase Order.
- (b) If the Supplier has committed a wilful or substantial breach of any of the terms of this Purchase Order (including any of the Undertakings), or the Client is of the opinion that the Supplier is or may become insolvent, is financially incapable of performing, or is unwilling or unable to perform its obligations as required by this Purchase Order, the Client may reject any Goods Delivered and/or may cancel the Purchase Order by written notice to the Supplier, in which case the Supplier shall not be entitled to any further payment under this Purchase Order and the Client may without payment of compensation take possession of such material, equipment, plant and other things on or in the vicinity of the site as are owned by the Supplier and all documents, information, materials and the like produced by the Supplier which are reasonably required by the Client to facilitate delivery of the Goods or complete the Services under this Purchase Order.

#### **15. PERSONAL PROPERTY SECURITIES ACT**

- (a) Unless a contrary intention appears, words or expressions used in this clause 15 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.
- (b) To the maximum extent permitted by law, the Supplier waives the right to any security interest pursuant to the PPS Act in respect of the Goods, irrespective of their nature and that the Supplier may have possession of the Goods.
- (c) If at any time, the Client determines that this Purchase Order (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Client may apply for any registration, or give any notification, in connection with that security interest and the Supplier must promptly, upon the Client's request, do anything (including, but without limitation, signing, completing and / or producing documents, obtaining consent and supplying information) to provide more effective security over the relevant personal property and ensure that any such security interest in favour of the Client:
  - (i) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
  - (ii) ranks as a first priority security interest;
  - (iii) enables the Client to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
  - (iv) enable the Client to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.
- (d) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Supplier agrees that sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPS Act will not apply to the enforcement of the security interest.

#### **16. GOODS AND SERVICES TAX**

- (a) The Price payable for Goods under this Purchase Order is inclusive of GST unless specifically described as 'GST Exclusive'. If the Supplier makes a taxable supply to the Client under or in connection with this Purchase Order, and the consideration for that supply has been specifically described as 'GST Exclusive', upon the receipt of a tax invoice the Client must pay the Supplier an additional amount equal to the GST payable on that supply at the same time as the GST exclusive consideration is paid.
- (b) The Client need not make a payment in respect of a taxable supply made under or in connection with this Purchase Order until the Supplier has given the Client a tax invoice in respect of that taxable supply.
- (c) Amounts payable under this Purchase Order shall be adjusted to reflect the benefit of any reduction in the Supplier's costs relating to that supply resulting from the abolition or reduction of any existing taxes. Any such adjustment will be effective as of the date of the relevant reduction in the Supplier's costs.
- (d) In compliance with the relevant withholding tax legislation or any ATO Public Ruling, the Client will withhold an amount of tax from any payment it makes to the Supplier if the payment is for a supply unless the Supplier provides to the Client, an invoice or other document in relation to the supply for which the payment is consideration that quotes the Supplier's Australian Business Number (ABN), or the Supplier meets the criteria for exemption from the Pay as You Go Withholding (PAYG) requirement as contained in section 12-190 of schedule 1 of the Taxation Administration Act 1953 (Cth).

#### **17. SUBCONTRACTING AND ASSIGNMENT**

- (a) The Supplier must not assign or subcontract its rights or obligations under this Purchase Order without the prior written consent of the Client. To the maximum extent permitted by law, Supplier is entirely responsible (legally and factually) for any act or omission of a subcontractor.
- (b) The Client may assign all or part of this Purchase Order without the consent of the Supplier. The Client may assign, novate, transfer, or otherwise dispose of or deal with all or any part of its rights or obligations under this Purchase Order to any related corporation (as that term is defined in the Corporations Act 2001 (Cth)) of the Client.

#### **18. JURISDICTION**

- (a) This Purchase Order shall be read and construed according to the laws of the State in which the Goods are delivered, or Services are performed, and the Supplier shall submit to the jurisdiction of any competent Court in that State

#### **19. STATE CODES**

Where applicable and determined by the location of the work under the Purchase Order, the State specific Government's Code of Practice or equivalent for the Building and Construction Industry and the State specific Government's Implementation Guidelines to the Code of Practice for the Building and Construction Industry apply to the Services. By accepting this Purchase Order, the Supplier warrants it is not precluded from accepting the work under the Purchase Order and agrees that it will be deemed to have read and understood, and that it will comply with the State specific Code and State specific Guidelines.

#### **20. OCCUPATIONAL HEALTH AND SAFETY**

The Supplier must, so far as is reasonably practicable, provide and maintain a working environment that is safe and without risks to health and meet all requirements of the Client approved OHS Plan, Safe Work Method Statement(s) and other OHS documentation.

The Supplier shall ensure that prior to commencing the Services, the Supplier's employees, subcontractors, consultants, and any of their employees commencing work related to this Purchase Order has completed the Client's site induction, including providing individual licences and certifications that are required to undertake the Services in accordance with Legislative and Industrial Relations requirements. The Supplier acknowledges and agrees that it has management and control of the area where the Services are performed.